

BEFORE THE STATE TAX APPEAL BOARD

OF THE STATE OF MONTANA

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SIEGFRIED & INGRID)
FUHRMANN,)
Appellants,) DOCKET NOS.: PT-1997-45, &
-vs-) PT-1997-46
THE DEPARTMENT OF REVENUE) FINDINGS OF FACT,
OF THE STATE OF MONTANA,) CONCLUSIONS OF LAW,
Respondent.) ORDER and OPPORTUNITY
FOR JUDICIAL REVIEW

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The above-entitled appeals came on regularly for hearing on the 18th day of August, 1998, in the City of Kalispell, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board).

The notice of the hearing was duly given as required by law. The taxpayers, represented by Angela M. Vaninetti, attorney, and Siegfried and Ingrid Fuhrman presented testimony in support of the appeals. The Department of Revenue (DOR), represented by Harvey Paugh, appraiser, presented testimony in opposition to the appeals. Testimony was presented, exhibits were received, an opportunity for post hearing submittal provided, and the Board then took the appeals under advisement; and the Board

having fully considered the testimony, exhibits and all things and matters presented to it by all parties, finds and concludes as follows:

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter, the hearings hereon, and of the time and place of said hearings. All parties were afforded opportunity to present evidence, oral and documentary.

2. The taxpayers are the owners of the property which is the subject of these appeals and which is described as follows:

PT-1997-45

Land and the improvements on Unit 6 Tract 3E,
River Retreat, S17 T29N R21W, Flathead County,
Montana. DOR identification number 0980612

PT-1997-46

Land and the improvements on Unit 2 Tract 3D,
River Retreat, S17 T29N R21W, Flathead County,
Montana. DOR identification number 0980610

3. The subject properties in both PT-1997-45 and PT-1997-46 for the 1997 tax year, were appraised by the DOR at a value for each of \$14,920 for the land and \$105,280 for the improvements.

4. The taxpayers appealed to the Flathead County Tax Appeal Board requesting a reduction in value for each property to \$5,000 for the land and \$88,479 for the improvements in PT-1997-45, and \$5,000 for the land and \$88,682 for the improvements in PT-1997-46.

5. The county board adjusted the value to \$110,000 for both the land and improvements in PT-1997-45 and \$110,000

for both the land and improvements in PT-1997-46. It was not explained how the values were separated as to land and improvements.

6. The taxpayer then appealed that decision to this Board.

7. The DOR did not appeal that decision to this Board.

8. The taxpayer filed a form AB-26 with the DOR on September 24, 1997 for an informal review of the appraised values. The DOR adjusted the value of each property to \$117,300 as a result of that review.

TAXPAYERS' CONTENTIONS

The subject properties located at 2984 and 2988 Rufenach Lane are considered condominium properties by the taxpayers. The units were originally built as duplexes and subsequently sold as condominiums in 1993. The decision to sell the units as condominiums was made following a consultation with their lawyer, who at that time, had discussed the properties with the local planning board. It is the taxpayers position that the local tax appeal board did not fully consider the recent sales of comparable properties. There are, they believe, recent sales and advertisements of properties currently for sale that are less than the local board value now established.(Ex 1) A property identical to the

subject properties and located at 2982 Rufenach Lane was advertised as a legal notice under a "trustees sale" for \$110,166.57, less attorneys fees and costs, for a net price of \$101,792. There were no inquiries made, and no one attended the sale and no bids for the property were received. A second sale for a property at 2984 Rufenach Lane, again a "trustees sale", offered for \$111,263.03, less attorneys fees and costs, for a net price of \$102,890, also attracted no bids. The taxpayers argued, since a trustees sale is advertised in the paper and that exposure generated no interest, the only assumption to be drawn can be that the advertised price was too high.

The second point made by the taxpayer is that in 1992 the market value of two units together was \$112,000 total.(Ex 2) In 1993 the total value was raised to \$145,125 for the two units.(Ex 2) That value was appealed and the value returned to \$112,000. After the building was "condominiumized" in 1994 and sold as two separate units, each one was then valued at \$115,230. A picture of the property and a copy of the real estate listing describing the units as one complex with two units was submitted.(Ex 3) The taxpayer contended that appraisals of property in the area deemed comparable and subsequently sold are under-appraised at about 68% of the sales price. The subject property is appraised at more than 110% of what the market value actually is.

The Fuhrmans had sold a unit at 2988 Rufenach Lane to another party who was unable to continue their purchase agreement. The Fuhrmans purchased the property at 2988 Rufenach Lane back from them prior to any foreclosure action.

The Fuhrmans paid \$103,866 when they repurchased the property.

The other party was about to default and they decided to relinquish the property to the Fuhrmans without a foreclosure action.

Mr. Fuhrman testified that the value of one-half an acre of \$14,920 is not realistic when a property of ten acres adjacent to the subject sold for \$65,000, yet it is appraised at \$4,868 per acre. The subject property has no river frontage and a very limited view. He stated that the \$103,866 price that he paid to buy the property at 2988 Rufenach Lane was established to avoid the foreclosure problems and represented the amount remaining due from the original purchaser. The Fuhrmans also had to pay three years of property taxes that were due on the property. The Fuhrmans also agreed to allow the original purchaser to remain in the property as a renter for a period of two years.

Mr. Fuhrman believes that the problems of valuation began at the time they changed the nature of this property from a duplex to condominiums in 1993. He testified that when the first sale came to the assessor's office, that office was

unaware of the fact that it was only one half of the building.

He theorized that when the next sale came into that office, there was confusion about what to do with it, and a mistake in the value was made. He has been attempting to correct that mistake ever since. When the units were being sold in 1993 and 1994 they were generally selling for \$115,000. The Fuhrmans did sell one unit that is on the river with a view toward Glacier Park for \$122,000.

The subject properties are now being held as rental units by the taxpayers. Mr. Fuhrman testified that the market for condominiums in 1993 and 1994 was a good one. He stated that the market has changed and is flooded with properties for sale. The taxpayers intend to keep the properties as rentals until the market turns around, and they may be able to sell them at that time.

The subject properties share a septic tank and a well rather than having separate sewer and water. The potential purchasers were made aware of that fact by way of an agreement that they were required to sign. That fact was not a problem when the units were sold, and is not a problem at this time for the taxpayers. Individual wells and septic systems would not be allowed because there is only one acre of land and the necessary size requirements for individual sewer and water could not be met.

Mr. Fuhrman arrived at his value for the land by using a sale price in 1993 of \$65,000 for 10.989 acres on Lot #2 River Retreat, and the DOR appraised value on that tract of \$4,860 per acre.(Ex 5) That land was sold vacant and remains that way.

DOR'S CONTENTIONS

Mr. Paugh testified how the DOR appraised the subject properties. He agreed with the taxpayer that there has been a long history between the taxpayer and the DOR in dealing with these properties. He stated that he has worked with Mr. Fuhrman from the time the buildings were originally built as duplex units. The DOR appraised values were initially arrived at using the cost approach to value.

When the properties were sold by the Fuhrmans, the DOR was also beginning a new appraisal cycle in 1993. Mr. Paugh believes that this fact of reappraisal plus the change in the status from duplex to condominium units caused confusion for the taxpayers and for the buyers of the units. The appraised values were adjusted by the DOR to figures closer to the values the properties were selling for at the time because of a lack of good comparable sales. Mr. Paugh stated that the eventual sales as condominiums proved that the DOR was previously undervaluing the properties.

The DOR presented the property record cards for the

subject properties.(Ex A) Page one of that exhibit indicates that the current value has been determined by the DOR from the market approach to value, although Mr. Paugh testified that currently that is not relevant. He stated that the current appraised value is that determined by the local tax appeal board and that has not been appealed by the DOR. Page three of exhibit A is a listing of the sales of the units within this development as recorded with the DOR. Mr. Paugh believes these are the best reflection of value for the subject properties.

The land value has been determined by the DOR applying \$.50 per square foot. The DOR post-hearing submission states that the parcel sizes of the subject properties are larger than is typical for other condominium properties in the area. Because of the fact that the typical size is considered to be 2,000 square feet and the subject properties each have 29,000 square feet, they were not valued by using the Computer Assisted Land Pricing (CALP) table. The DOR did use the land pricing for neighborhood 170 described as the valuation for single family residence units in the surrounding area of the subjects. There were eleven sales of land in the area prior to 1996 that were analyzed by the DOR. The DOR determined that the first acre is valued at \$21,379 and each additional acre is valued at \$3,224. In addition to the above formula the DOR reviewed the sales of the nine River Retreat Condominiums from

the improvement's replacement cost less depreciation value plus \$.50 per square foot for the land and determined that to represent the fair market value for the subject properties.

BOARD'S DISCUSSION

The valuation date for the subject properties is January 1, 1997 based on the appraisal cycle base year date of January 1, 1996. The sales used by the DOR occurred prior to the required time to be considered by the them for the current appraised values. The sales, or repurchase transactions presented by the taxpayers, occurred beyond the January 1, 1996 date and were not considered in the sales history files by the DOR. The fact that there is duress on the part of the seller in those transactions calls into question the arm's-length nature of the sales as well.

The documentation of the DOR in this matter is confusing since the property record card indicates that the subject property was appraised using the market approach to value. The supportive documentation is also that of a market approach with sales of units in the same development presented to verify the sales of comparable property. All of the testimony however indicates that, in fact, the cost approach to value was used in the final determination of value.

There are two separate housing units on each parcel of land. The DOR chose to value the land from sales of land in

a single family residence neighborhood. It would not be atypical for a condominium to have shared sewer and water services, but it is not typical to have that situation exist on single family residence parcels. The comparability of land used for single family residences to that used for condominium development is very hard to make for numerous reasons. The Board recognizes the problem faced by the DOR in this instance since the lots are so much larger than that normally found in condominium use.

The sales figures for those units sold are a matter of fact. The decision of the local tax appeal board represents a fair determination of value for these properties in light of those sales, as well as those sales of questionable arms-length nature that occurred beyond January 1, 1996. The taxpayer stated in exhibit 5 that "One Acre land containing two Condo's was purchased for \$5,000.00 in 1987....." The taxpayer requested value for 1997 amounts to approximately \$10,000 if one considers both parcels under appeal. If the land has not changed in value for the reasons of the development itself, or the market trend over the nine years since that purchase, then the value of the improvements based on cost must be underestimated.

It is the opinion of this Board that the taxpayer has failed to present sufficient evidence to meet the burden of

proving that the decision of the local tax appeal board is in error, and these appeals are hereby denied and the decisions of the Flathead County Tax Appeal Board are affirmed.

CONCLUSIONS OF LAW

1. **15-8-111. Assessment - market value standard - exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence. (emphasis supplied)

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject properties each shall be entered on the tax rolls of Flathead County by the assessor of that county at the 1997 tax year value of \$110,000 for the land and improvements as determined by the Flathead County Tax Appeal Board.

Dated this 4th of December, 1998.

BY ORDER OF THE
STATE TAX APPEAL BOARD

PATRICK E. McKELVEY, Chairman

(S E A L)

GREGORY A. THORNQUIST, Member

LINDA L. VAUGHEY, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.